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**To: Hon. Commissioner of Patents
Attn: Office of Petitions**

From: Donald E. Stout

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Pages: 4 pgs. (including this cover sheet)

Phone:

Date: March 13, 2008

Re: U.S. Serial No. 09/083,180

CC:

Filed: May 22, 1998

ATS&K Ref: 612.36255X00


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(1) Reconsideration of Dismissal of Petition Dated February 13, 2008

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612.36255X00
4130/BA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Marc FLEURY et al

Serial No.: 09/083,180

Filed: May 22, 1998

For: IMPROVED DEVICE FOR MEASURING
PHYSICAL CHARACTERISTICS OF
A POROUS SAMPLEArt Unit: To Be Assigned
Examiner: To Be Assigned

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OFFICE OF PETITIONS

**RECONSIDERATION OF DISMISSAL OF PETITION
DATED FEBRUARY 13, 2008****ATTN: OFFICE OF PETITIONS**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

March 13, 2008

Sir:

Applicants request reconsideration of the February 13, 2008 Dismissal of Applicants' renewed Petition for Expedited Consideration of August 5, 1999 Response to Notice of Abandonment, dated January 29, 2008.

Fundamentally, as a consequence of the amendment of patent term in 35 U.S.C. §1.54(a)(2) to twenty years from the date of filing, the term of any patent issuing from this application shall end on May 22, 2018. While the Senior Petition's Attorney has imposed upon the Applicants a showing of diligence, it is submitted that such diligence is not, in fact, required from any authority in the M.P.E.P., Rules of Practice or Statutes.

The rationale of the Petition's Examiner is as follows:

The petition must be dismissed at this time, however, because the extended period between the filing of the original petition to withdraw the holding of abandonment on August 5, 1999, and the filing of the subject petition on January 25, 2008, obligates the Office to inquire into the reasons for the delay.

The Petition's Examiner does not recite any appropriate authority for supporting this proposition. The undersigned is not aware of any rule requiring diligence in responding to the failure of the Office to properly process the Applicants' Responses to Notice of Abandonment of August 5, 1999 and October 7, 2005. Neither M.P.E.P. Sections §203.08 or 503 requires a showing of diligence for the revival of an abandoned application predicated upon a showing that a U.S. PTO communication was never received. The elapsed time between the original Petition, the October 7, 2005 Petition, and the January 29, 2008 Petition has no effect on patent term since no patent term restoration is possible. Therefore, there is no prejudice to the public regarding extension of patent term from any patent to issue from this application.

Moreover, while it is correct that the postcard receipt and the original Response to Notice of Abandonment of August 5, 1999 contained an erroneous reference to Series "08", it is also indisputable that the Postcard Receipt and August 5, 1999 Response to Notice of Abandonment contained sufficient identifying information pursuant to the M.P.E.P. authority to enable the office to properly identify the application. Only a single digit was miscaptioned and further, the correct first inventor, filing date and title of invention were contained in the August 5, 1999 Response to Notice of Abandonment which was not processed appropriately by the U.S. PTO under its M.P.E.P. Guidelines. Moreover, the Petition for Expedited Consideration of August 5, 1999 Response to Notice of Abandonment dated

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October 7, 2005 contained the correct Serial Number and series. In any event, it is submitted that the numerous communications of the applicants with sufficient identifying information demonstrates diligence especially when it is considered that no authorities require a showing of diligence is *per se* necessary for reinstatement.

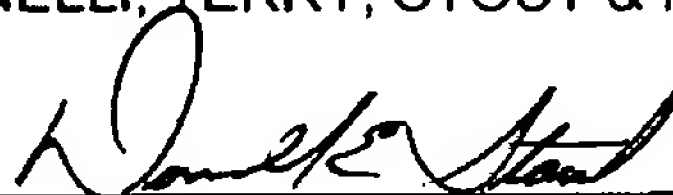
In summary, this application should be returned to pending status since the elapsing of time which has occurred with the filing of three Petitions requesting the application to be returned to pending status, culminating with the January 29, 2008 submission, has not affected the term of any patent to issue from this application and, furthermore, has not prejudiced the public from any extension term of any patent issuing from this application that would have occurred if the abandonment had not occurred. If this application is not returned to pending status, the effect of the current ruling will be punitive to Applicants without any prejudice to anyone else being demonstrable given the fixed term of any patent to issue from this application.

If further information is required, it is requested that the Petition's attorney call the undersigned to discuss the matter.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (612.36255X00) and please credit any excess fees to such Deposit Account.

Respectfully submitted,

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DES:dlh